IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1041 OF 2006

Reminiscent India Television Ltd. & Ors....Petitioners
Vs.
Satyen Bhatia Proprietor Status
Video & Ors. ...Respondents

Ms A.R. Lambay i/by M/s.Lambay & Co. for the Petitioner.
Mrs Naina Desai i/by Shri Nimesh Desai for the Respondent No.1.
Shri S.R.Borulkar, A.P.P. for the Respondent-State.

CORAM : A. S. OKA, J.
DATE : AUGUST 16, 2006.

P.C.:

1. Rule. The learned Advocate appearing for the Respondent No.1 waives service. The learned A.P.P. waives service for the Respondent No.2.

2. By the order impugned in this Writ Petition the learned Additional Sessions Judge, Mumbai rejected a Revision Application filed by the present Petitioners. The Revision Application was rejected summarily. The Advocate for the Petitioners pointed out that the Revision Application was filed by the Petitioners for challenging an order passed by the learned Magistrate of issuing process on the private complaint filed by the first Respondent. She submitted that Revision Application ought to have been

heard and decided on merits. She submitted that the impugned order is perverse and same is liable to be set aside.

3. The learned counsel appearing for the Respondent No.1 has opposed this Writ Petition. She has, however, not disputed that the Revision Application under section 397(1) of the Code of Criminal Procedure, 1973 was maintainable against an order of issuing process on a private complaint.

4. I have considered the submissions. It appears that there was some delay in filing Revision Application. Without considering the prayer for condonation of delay, Revision Application has been dismissed summarily. The only reason given by the Sessions Court is in the paragraph No.3 of the impugned judgment which reads thus:

> "3. It appears that the applicants should have made the similar application before the Trial Judge and if the said application is rejected by the Trial Judge, then the applicant would have preferred the

revision application before the court of Sessions. Since the applicants have not exhausted the proper remedy by not filing the proper application before the Ld. Magistrate, it appears that the revision application appears to be pre-mature and on this ground alone the revision application is not maintainable without its admission."

It is thus obvious that Revision Application is not at all decided on merits. Such summary disposal of the Revision Application was totally uncalled for. Hence, the order impugned will have to be set aside and matter will have to be remanded to the Sessions Court for deciding the same afresh.

5. Hence, I pass the following order:

(i) The impugned judgment and order dated 28th February, 2006 is quashed and set aside and the Criminal Revision Application (St) No.677 of 2006 is restored to the file of the Sessions Court.

(ii) The Sessions Court will hear the Application for condonation of delay in filing the Revision Application. If delay is condoned, the Sessions Court will hear and decide the Revision Application on merits in accordance with law.

(iii) All contentions on merits of the controversy are expressly kept open.

(iv) Rule is made partly absolute in above terms.

(v) No orders as to costs.

(vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE